HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P. No. 16215 OF 2003

ORDER:

The petitioner was initially granted I.L. 24 licence under A.P. (Indian Liquor & Foreign Liquor) Rules 1970 (for short 'the Rules') at Epurupalem Village of Cheerala Mandal on 24-4-2002. On the application made by the petitioner, 2nd respondent accorded permission to shift the shop from Epurupalem to Thotavaripalem of Cheerala Mandal, vide proceedings dated 1-4-2003. The petitioner has paid licence fee of Rs.4,50,000/- at Epurupalem village and on shifting the shop to Thotavaripalem he claims that the licence fee payable is only at Rs.3,00,000/-, since the population of Thotavaripalem is less than 10,000.

Opposing the writ petition, respondent Nos.1 to 3 filed counter affidavit stating *inter alia* that Thotavaripalem is hamlet of Epurupalem. The population of Epurupalem as per 1991 Census is 34,848. The petitioner had voluntarily paid correct licence fee of Rs.4,50,000/-. Hence the petitioner is estopped in contending that the licence fee is only Rs.3,00,000/- and the facts in W.P.No.17837 of 2002 are not similar to the facts of this case, where the shop was shifted from higher licence fee slab to lower licence fee slab. In view of the same petitioner is not entitled to any benefit.

Learned counsel for the petitioner contends that in an identical matter being W.P.No.17837 of 2002 questioning the action of the respondents fixing the licence fee at the old rate, was allowed by this court. In view of the same, the respondents are not entitled to demand licence fee at Rs.4,50,000/- but have to collect only at Rs.3,00,000/- per annum on such shifting.

He further contends that under Rule 3(r) of the Rules defines village/town/city etc., which was amended by G.O.Ms.No.816 dated 22-7-2003 and the words 'revenue village and its hamlets/Municipality/Municipal corporation shall be as defined in the latest Census' are substituted. The said amendment will be

prospective in nature but will not govern the existing licences to collect the fees at Rs.4,50,000/-. As per the certificate issued by the Mandal Revenue Officer, the population of Thotavaripalem is 5320. In view of the same the respondents are entitled to collect only Rs.3,00,000/- as licence fee.

The learned Government Pleader for Excise contended that Rule 3(r) existed prior to the amendment shall be read as defined in the latest Census. As per the latest Census, revenue village – Epurupalem includes Thotavaripalem. Merely because it is made a separate Gram Panchayat, the petitioner cannot claim the benefit as held by this court in similar circumstances in W.P.No.5663, 5883 & 6026 of 2002, dated 4-4-2003.

It is not in dispute as per population Epurupalem is a revenue village, which includes Thotavaripalem and several other villages. This court exhaustively considered similar aspect in the above writ petitions as per the population figures mentioned in the Census. When the revenue village comprises of several villages and for the purpose of interpretation of Rule 3(q) of the Rules, population means the population of revenue village as per Census. On a reading of Rule 3(q)(r) of the Rules will manifest that the licence fee is fixed basing upon the revenue village as per the latest Census but not Panchayat-wise. In view of the same, I do not see any merit in the writ petition. The Rule 3(r), which is amended, is only explanatory in nature.

In view of the same, the contention made by the petitioner cannot be accepted. Accordingly the Writ Petition is dismissed. No costs.

Js 15th March, 2004